

Remarks

Claims 1-15 are currently pending in the present application. Claims 4-5 and 8-15 are withdrawn as drawn to non-elected subject matter. The restriction requirement having been made final, these claims are canceled herein. Applicants reserve the right to pursue this canceled subject matter in a later-filed continuing or divisional application.

Claims 1-2 are provisionally rejected for non-statutory double patenting over claims 1 and 5 of co-pending application serial no. 10/624,609. The Office Action states that the cited claims are not patentably distinct because the claims of serial no. 10/624,609 claim a method of treating acute maxillary sinusitis of fungal origin with fluconazole, voriconazole or itraconazole. Applicants traverse this rejection.

Claims 1 and 2 of the present application relate to a composition for topical treatment of otitis externa, a skin disease and have been amended with respect to the agents claimed. Claim 1 now recites an antifungal agent that does not include the cited agents. Claims 1 and 5 of the cited application relate to a method of treating acute maxillary sinusitis using an oral agent. Therefore the two claim sets relate to different types of treatment modalities.

It is well known in the medical arts that treatment for an infection using one type of administration is not expected to be transferable to other routes of administration and that topical and oral formulations differ. It therefore would not be obvious that an oral treatment for a mucositis condition would be effective if modified to contain different active agents as a topical formulation and applied topically. A topical formulation


with an excipient acceptable for topical administration is not obvious over an oral treatment method even when the agents are the same. Applicants submit that the claims of the cited application are patentably distinct. The Office is invited to reconsider this rejection in view of the amendments made to the claims herein. Applicants request that this rejection be withdrawn.

Claims 1-2 and 6 are provisionally rejected for non-statutory double patenting over co-pending application serial no. 11/018,312. Applicants would be willing to file a terminal disclaimer with respect to this application should any conflicting claims be found allowable in both applications.

Claims 1-3 and 6-7 are rejected as anticipated by Ponikau et al., which is cited as teaching a method of treating mucositis such as chronic otitis media. Applicants traverse this rejection.

To make out a case of anticipation, the Office is required to show that the cited reference teaches each and every element of the rejected claims. M.P.E.P. § 2131. Applicants have amended the present claims, which now recite that the antifungal agent is selected from posaconazole, caspofungin, micafungin and anidulafungin. Nowhere do Ponikau et al. disclose or even suggest a composition containing one or more of these antifungal agents, alone or with any additional active ingredient, with an excipient pharmaceutically acceptable for topical administration. The Office therefore cannot make the required showing that the art reference teaches all claim elements.

Applicants submit that the rejection of the claims over Ponikau et al. is no longer proper and request that it be withdrawn.

RESPECTFULLY SUBMITTED,					
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